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New York, 30 April–1 June and Geneva, 2 July–10 August 2018

Protection of the environment in relation to armed conflicts

Title of Part Four and texts and titles of the draft principles 19, 20 and 21 provisionally adopted by the Drafting Committee at the seventieth session

Part Four
Principles applicable in situations of occupation

Draft principle 19
General obligations of an Occupying Power

1. An Occupying Power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.

2. An Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.

3. An Occupying Power shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict.

Draft principle 20
Sustainable use of natural resources

To the extent that an Occupying Power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes environmental harm.

Draft principle 21
Due diligence

An Occupying Power shall exercise due diligence to ensure that activities in the occupied territory do not cause significant harm to the environment of areas beyond the occupied territory.

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International Law Commission
Seventieth Session
New York, 30 April–1 June, and Geneva, 2 July–10 August 2018

Draft report of the International Law Commission on the work of its seventieth session

Rapporteur: Ms. Patrícia **Galvão Teles**

Chapter XII
Commemoration of the seventieth anniversary of the Commission

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A. Introduction

1. The Commission, at its sixty-eighth session (2016), recommended that anniversary events be held during its seventieth session, in 2018, at meetings in New York and in Geneva. In that connection, the Commission recommended that a solemn half-day meeting of the Commission, to which high-level dignitaries would be invited, and an informal half-day meeting with delegates to the Sixth Committee of the General Assembly to exchange views on the work of the Commission, the relationship between the Commission and the Sixth Committee, and the role of both bodies in the promotion of the progressive development and codification of international law should be held in New York. The Commission also recommended that a one and a half day conference with legal advisers of States and international organizations, academics and other distinguished international lawyers dedicated to the work of the Commission should be held in Geneva. The Commission also recommended that a report on the meetings should be discussed at the annual meeting of the Legal Advisers in New York, and that the outcome of the anniversary events be published. The Commission requested the Secretariat, in consultation with the Chair of the Commission and the Chair of the Planning Group, to commence arrangements for the holding of the commemorative events.[1] The General Assembly took note with appreciation of these recommendations.[2]

2. The Commission, at its sixty-ninth session (2017), confirmed the plans for the anniversary, noting that the conference in Geneva would be preceded by a high-level opening session, to which high-level dignitaries would be invited. An advisory committee[3] was established to continue to work intersessionally, together with the Secretariat, towards the convening of the commemorative events.

3. Moreover, the Commission recommended that the events in New York should be held on 21 May 2018, while the events in Geneva should be held on 5 and 6 July, under the overarching theme of "70 years of the International Law Commission — Drawing a balance for the future".[4] The General Assembly took note with appreciation of the recommendation of the Commission on the arrangements regarding the commemoration of its seventieth anniversary and encouraged States to make voluntary contributions in order to facilitate the commemoration.[5]

B. Seventieth anniversary session of the International Law Commission

4. At its 3392nd meeting, on 1 May 2018, the Commission received a briefing on the arrangements for the commemoration of the seventieth session of the Commission.

5. Under the overarching theme "70 years of the International Law Commission — Drawing a balance for the future", the Commission celebrated its seventieth anniversary, with events organized in New York on 21 May 2018 and Geneva on 5 and 6 July 2018. In New York, at its 3407th meeting on 21 May 2018, the Commission convened a solemn half-day meeting, which was followed, at its 3408th meeting, by a half-day conversation with representatives of the Sixth Committee of the General Assembly. At the 3407th meeting, commemorative speeches were delivered by: Mr. Eduardo Valencia-Ospina, Chair of the Commission; Mr. Miroslav Lajčák, President of the General Assembly; Mr. Miguel de Serpa Soares, United Nations Legal Counsel, on behalf of the Secretary-General; Mr. Burhan Gafoor, Chair of the Sixth Committee of the General Assembly; Mr. Jürg Lauber,

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[1] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10* (A/71/10), paras. 327–332.

[2] General Assembly resolution 71/140 of 13 December 2016.

[3] The Advisory Group was composed of: the Chair of the Commission, the Chair of the Planning Group, Mr. Yacouba Cissé, Mr. Shinya Murase and Mr. Pavel Šturma.

[4] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 10* (A/72/10), paras. 279–281.

[5] General Assembly resolution 72/116 of 7 December 2017.

Permanent Representative of Switzerland to the United Nations; and Ms. Jennifer Newstead, Legal Adviser of the Department of State of the United States of America.

6. The keynote address was delivered by Mr. Nico Schrijver, Professor of Public International Law, Grotius Centre for International Legal Studies, Leiden University, and President of the Institute of International Law.

7. During the conversation with the Sixth Committee, at the 3408th meeting, Mr. Gafoor and Mr. Valencia-Ospina offered introductory remarks, which were followed by two panel discussions. The first panel — on "The Commission and the Sixth Committee: structural challenges" — addressed the following questions: what were the future challenges to the progressive development of international law and its codification; whether the Commission should concentrate more on general international law or on particular areas of international law; whether the distinction between progressive development and codification needed to be revisited; and to whom did the Commission speak — whether it was only to States, or also to courts and other actors.

8. The panel was chaired by Mr. Valencia-Ospina, while Mr. François Alabrune, Ministry of Foreign Affairs, France, Mr. Mahmoud Hmoud, Ms. Janine Coye Felson, Permanent Mission of Belize, and Mr. Ernest Petrič served as panellists.

9. The second panel — on "The Commission and the Sixth Committee: reflections on the interaction in the past and the future" — considered the questions: the ways in which the Sixth Committee and the Commission had interacted, formally and informally, to advance the progressive development of international law and its codification; how the bodies had influenced each other, and what had been the joint achievements and the difficulties; which practical measures could be taken to enhance the relationship between the Sixth Committee and the Commission; how the Commission should design its outcomes, and how the Sixth Committee should deal with them; and what the Commission should look like in 10 years.

10. The panel was chaired by Mr. Gafoor, while Mr. Evgeny Zagaynov, Ministry of Foreign Affairs, Russian Federation, Ms. Concepción Escobar Hernández, Mr. Angel Horna, Permanent Mission of Peru, and Mr. Hussein A. Hassouna served as panellists.

11. The event in Geneva consisted of a solemn meeting and a meeting with legal advisers from States and other international law experts, focusing on various aspects of the work of the Commission in the progressive development of international law and its codification. At the 3422nd meeting on 5 July 2018, commemorative speeches were delivered by: Mr. Valencia-Ospina; Mr. Miguel de Serpa Soares; Ms. Corinne Cicéron Bühler, Director, Directorate of International Law and Legal Advisor of the Federal Department of Foreign Affairs, Switzerland; and Ms. Kate Gilmore, United Nations Deputy High Commissioner for Human Rights.

12. The keynote address was delivered by Mr. Abdulqawi Ahmed Yusuf, President of the International Court of Justice.

13. In the meetings with legal advisers and international law experts, at the 3423rd and 3424th meetings on 5 and 6 July 2018, introductory remarks were made by Mr. Georg Nolte, Chair of the Commission at its sixty-ninth session, and five panel discussions took place.

14. The first panel — on "The Commission and its impact" — discussed the following questions: what happened to the final outcomes of the Commission; what had been the impact of the Commission's work on State practice, including court decisions and legal scholarship; and to what extent the form of the work of the Commission affected its impact.

15. The panel was chaired by Mr. Pedro Comissário Afonso, Permanent Representative of Mozambique in Geneva, while Mr. Alejandro Rodiles, Autonomous Technological Institute of Mexico, Ms. Laurence Boisson de Chazournes, University of Geneva, and Mr. Pavel Šturma served as panellists.

16. The second panel — on "The working methods of the Commission" — addressed the topics: whether the Commission should adapt its working methods to the outcomes of its work; how communication with other bodies and persons had changed and how it could

be improved; the role of Special Rapporteurs; the role of the Drafting Committee; the role of commentaries; the role of the Codification Division; and other support.

17. The panel was chaired by Mr. Aleksandar Gajić, Ministry of Foreign Affairs, Serbia, while Ms. Danae Azaria, University College London, Mr. Maurice Kamto, University of Yaoundé II, and Mr. Shinya Murase served as panellists.

18. The third panel — on "The function of the Commission: how much identifying existing law, how much proposing new law?" — discussed the following questions: the need for an "International Law Commission" — then (and now?); whether it was true that the distinction between progressive development and codification was usually difficult to maintain, or whether there were topics where that distinction should be emphasized in the work of the Commission; and whether the Commission should emphasize the consolidation of existing law or the development of new law.

19. The panel was chaired by Ms. Davinia Aziz, Attorney-General's Chambers, Singapore, while Mr. Yifeng Chen, Beijing University, Ms. Ineta Ziemele, Riga Graduate School of Law, and Mr. Sean Murphy served as panellists.

20. The fourth panel — on "The changing landscape of international law" — addressed the following topics: the Commission and the development of international law — an assessment after 70 years; which topics the Commission should take up next; whether the methods used by the Commission to select its topics should be reconsidered; and what role States could play in the identification of topics.

21. The panel was chaired by Ms. Elinor Hammarskjöld, Ministry of Foreign Affairs, Sweden, while Ms. Hajer Gueldich, University of Carthage, Mr. Keun-Gwan Lee, Seoul National University, and Mr. Claudio Grossman Guiloff served as panellists.

22. The fifth panel — on "The authority and the membership of the Commission in the future" — discussed the questions of: how the Commission and the outcome of its work was perceived by Governments, courts and other international law-making bodies and processes; whether the relationship with the Sixth Committee needed to be improved; whether the different legal traditions, regional origins and professions of the members of the Commission were influencing its work; how to attain gender parity, and perhaps other forms of diversity, such as generational diversity; and what were the possibilities and the pitfalls for the Commission in the decade to come.

23. The panel was chaired by Mr. Jamchid Momtaz, former member of the Commission, while Ms. Zuzana Trávníčková, University of Economics, Prague, Ms. Mónica Pinto, University of Buenos Aires, and Mr. Dire Tladi served as panellists. The Chair of the Commission made concluding remarks.

24. The commemorative events in New York and Geneva were enriched by a large number of side events, in which the members of the Commission and representatives of States, international organizations and academic institutions participated. The side events included the following: an informal exchange of views on immunity of State officials, crimes against humanity and identification of customary international law, sponsored by the Asian-African Legal Consultative Organization; a lecture by Mr. Shinya Murase on the work in progress of the Commission on the protection of the atmosphere, given as part of the Dag Hammarskjöld Library speaker series; a panel discussion on the role of the Commission in the fight against impunity, organized by Brazil, the Republic of Korea, Slovakia and Switzerland; an event entitled, "The promise (and pitfalls) of universal jurisdiction", organized by Costa Rica; a lecture by Ms. Nilüfer Oral on "Climate change and protecting the oceans — a tale of two regimes", given as part of the Dag Hammarskjöld Library speaker series; a panel discussion on "The codification of international law: back to the future?", organized by the United Nations Law Committee of the American Branch of the International Law Association; an informal discussion on the interplay between immunity and impunity at the international level, and on the practical implications of the result of identification of customary international law, organized by the Asian-African Legal Consultative Organization; a dialogue entitled, "A way forward on universal jurisdiction: a dialogue with Commission members", organized by Costa Rica; a panel discussion on "Enhancing the contribution of small and developing States to the work of

the Commission", organized by Fiji, Ghana, Honduras and Saint Lucia; a lecture by Mr. Ki Gab Park on *lex lata and lex ferenda* in the recent works of the Commission, given as part of the Dag Hammarskjöld Library speaker series; a panel discussion on the draft articles on the protection of persons in the event of disasters, on the occasion of its seventieth session, organized by Colombia; a panel entitled, "Articles on responsibility of States for internationally wrongful acts: *quo vadis*?", organized by Brazil; a discussion of current issues in the field of succession of States, organized by the Czech Republic and Slovenia; a round-table discussion on achieving gender parity at the Commission, entitled "Seven women in seventy years", organized by China, Finland, Portugal, Spain, Sweden and Turkey; a lecture by Ms. Patrícia Galvão Teles on "The Commission viewed from the outside: Member States, academia and the International Court of Justice", given as part of the Dag Hammarskjöld Library speaker series; and a panel discussion on the Global Pact for the Environment, sponsored by the Environment Commission of the Club des Juristes.

25. As part of the events, a photo exhibition was organized by the Secretariat in New York, Geneva and The Hague on the history of codification of international law and the accomplishments of the Commission.

26. Pursuant to General Assembly resolution 72/116 of 7 December 2017, States were encouraged to make voluntary contributions to the trust fund for the Office of Legal Affairs to support the promotion of international law in order to facilitate the commemoration of the seventieth anniversary of the Commission. The following generous financial contributions have been received from Governments: Chile (50,000 United States dollars); China (10,000 United States dollars); Finland (10,000 euros); Ireland (10,000 United States dollars); Portugal (5,043 United States dollars, earmarked for a reception on the occasion of an exhibition; see paragraph below); Qatar (10,000 United States dollars); Singapore (5,000 United States dollars); Sri Lanka (5,000 United States dollars); and United Kingdom of Great Britain and Northern Ireland (2,000 pounds sterling). Contributions were also received from Istanbul Bilgi University (5,000 United States dollars) and others (4,000 United States dollars).

27. The following Governments offered contributions in kind: India, Japan and Viet Nam — a lunch reception in New York on 21 May 2018; the Republic of Korea — a reception on the occasion of an exhibition in New York on 21 May 2018, together with Portugal (see previous paragraph); Romania — an evening reception in New York on 21 May 2018; Germany — a lunch reception in Geneva on 5 July 2018; Switzerland — music during the solemn meeting and an evening reception on 5 July 2018; and Austria and Czech Republic — a lunch reception on 6 July 2018.

28. The Commission is most grateful for the generous contributions, which were used to cover expenses and incidental costs related to the organization of events in New York and Geneva. These included: the preparation of promotional material; the organizing of the photo exhibition, including a reception to launch the exhibition in New York; travel expenses (ticket and per diem) of the keynote speaker in New York and panellists invited to the commemoration in Geneva; decorations, music and refreshments in the conference hall in Geneva; and various receptions.

29. The details of proceedings of the seventieth anniversary commemorative events will be made available in a publication, to be prepared and issued as soon as possible, and to be given the widest possible circulation. Some of the resources of the trust fund have been set aside to ensure that the publication is readily available to potential users, including from developing countries.

30. The Commission notes that a symposium on the theme "The contributions of the International Law Commission to the development of international law in the past/next 70 years: codification, progressive development, or both?" will be organized by the Law Review of the Florida International University on 26 and 27 October 2018.